Supreme Court, U.S.
FILED
JUL 21 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1980

79-1574

CHARLES H. BROWN and CHAD ALLAN BROWN,
Petitioners

versus

JOE A. STONE, et al.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF MISSISSIPPI

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Armis E. Hawkins
P. O. Box 266
Houston, Mississippi 38851

Attorney for Respondents

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

INDEX

	Page
Index of Authorities	i
Legal Argument Before the Supreme Court of Mississippi	6
Petitioner Has No Standing and the Issue is Moot	10
Conclusion	13
Certificate of Service	15
Appendix "1" (Affidavit of Doyle McQuary, Superintendent of Education of Chickasaw County, Mississippi)	App. 1
Appendix "2" (Affidavit of John C. Williams, Jr., County Superintendent of Education of Madison County, Mississippi)	App. 2

INDEX OF AUTHORITIES

	Page
Brown, et al. v Stone, (Miss. 1979) 378 So(2d) 218	9
FeFunis v Odegaard, 1974, 416 U.S. 312, 40 L. Ed. 2d 164, 94 S. Ct. 1704	12
Flast v Cohen, 1968, 392 U.S. 83, 99, 20 L. Ed. 2d 947, 961, 88 S. Ct. 1942	12
In Re: Elwell (N.Y. 1967), 284 N.Y.S.2d 924	8
Itz v. Penick, (Texas 1973), 493 S.W.2d 506	8
Jackson v Commonwealth of Massachusetts, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905)	7
Kolbeck v Kramer, (N.J. 1964), 202 A.2d 889	8
Maier v Besser, (1972), 341 N.Y.S.(2d) 411	7,8
Mapp v Ohio (1961), 367 U.S. 643, 657, 6 L. Ed. 2d 1081, 1091, 81 S. Ct. 1684	14
McCartney v Austin, (N.Y. 1968), 293 N.Y.2d 188	8

INDEX OF AUTHORITIES (CONTINUED)

	Page
Prince v Commonwealth of Massachusetts, 321 U. S. 158, 88 L. Ed. 645, 64 S. Ct. 438	12,13
Sears, Roebuck v Carpet Layers, 397 U.S. 655, 25 L. Ed. 2d 637, 90 S. Ct. 1299	12
Zucht v King, (1922), 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194	7

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 79-1574

CHARLES H. BROWN and CHAD ALLAN BROWN,
Petitioners

v.

JOE A. STONE, et al., Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

September 26, 1978, the Petitioner Charles H. Brown, a resident of the Chickasaw County School District, on behalf of his son Chad Allan Brown, a minor, filed a Bill of Complaint in the Chancery Court in the First Judicial District of Chickasaw County, Mississippi, seeking an injunction against the Trustees of the Houston Municipal Separate School District and the Superintendent requiring the admission of his son as a first year student in the Houston Municipal Separate School District.

Brown, a chiropractor, alleged he had not permitted his son to be vaccinated because the vaccinations:

> "Are contrary to strong genuine and sincere religious beliefs actively practiced and followed by complainant. Complainant Brown is a member of the Church of Christ. Said Church does not, as a religious body, teach against the use of medicines, immunizations or vaccinations as prescribed by a physician."

Brown further alleged that the school had refused admittance because the vaccinations had not been taken; and that Senate Bill Number 2650 enacted by the Legislature of the State of Mississippi April 21, 1978 (codified in Mississippi Code of 1972 as Section 41-23-37), and Section 37-7-301, was invalid insofar as they forced "complainants to join a religious organization in order to practice their religious tenants (sic) freely."

The Defendants filed an Answer on November 27, 1978, in which they admitted that the child

had been refused admission, but not only because of the refusal of the father to have him vaccinated as required by law, but also because the child was ineligible to attend a school in the Houston Municipal Separate School District, because he had not received authority from the Chickasaw County School District to transfer. The answer also recited that the Complainant and his son did not reside within the Houston Municipal Separate School District.

Aside from the refusal to have the child vaccinated, the child was ineligible to attend the Houston Municipal Separate School District without a transfer authorization from the Chickasaw County School District in which he resided, and agreement by the Trustees of the Houston Municipal Separate School District to take him as a student. (##37-15-29, 37-15-31 Mississippi Code of 1972)

In addition to the Answer, the Defendants filed a General Demurrer to the Bill of Complaint.

The Chancellor heard the Demurrer first, and sustained it on the ground that the law passed by the Legislature was a proper exercise of police powers of the State of Mississippi. The opinion of the Court was filed December 22, 1978, and a Final Decree dismissing the Bill of Complaint, dated December 20, 1978, was filed on December 22, 1978.

On October 20, 1978, Chad Allan Brown was enrolled in the Woodland Attendance Center, an elementary school located in the Chickasaw County School District, and he completed his first year at this school on May 16, 1979. The actual status of Chad Allan Brown as a student is shown in the affidavit of Jack Cheatham, Superintendent of the Houston Municipal Separate School District, executed June 26, 1979, and filed with the Mississippi

Supreme Court in response of a motion by the Appellants Charles H. Brown and Chad Allan Brown to advance the case on the docket. It is also shown by the affidavit of Doyle McQuary, Superintendent of Education of Chickasaw County, attached as Appendix "1" to this Response.

At the conclusion of the 1978-79 school year, Chad Allan Brown transferred from the Woodland Attendance Center to the Ridgeland Elementary School located in, and part of the Madison County School District in Madison County, Mississippi, some 130 miles distance from the Houston Municipal Separate School District. He was enrolled in the Ridgeland Elementary School on August 24, 1979, and satisfactorily completed his second year of school in the 1979-80 school year, and has been promoted to the Third Grade of the Ridgeland Elementary School. He is now enrolled as a student in that public school for the 1980-81 school year. The current

status of this child is shown by the affidavit of John C. Williams, Jr., County Superintendent of Education of Madison County, Mississippi, attached as Appendix "2" to this Response.

LEGAL ARGUMENT BEFORE THE SUPREME COURT OF MISSISSIPPI

As Appellant in the Mississippi Supreme Court, Petitioners conceded that mandatory immunization against dangerous disease, without exemption based upon religious beliefs or convictions, was constitutionally valid. However, Petitioners argued the religious exemption was unconstitutional in that it required a person to belong to a recognized denomination to qualify for the religious exemption. Page 3 of Petitioner's Brief states the following:

> "Appellants admit that mandatory immunization against dangerous disease, without exemption based on religious beliefs or convictions, has been held

constitutionally valid as a reasonable exercise of police power. Jacobson v Commonwealth of Massachusetts, 197 U. S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905); Zucht v King, 260 U. S. 174, 43 S. Ct. 24, 67 L. Ed. 194 (1922).

"However, Mississippi has created a religious exemption in its vaccination statute, and in doing so the state must not allow this religious exemption to operate unconstitutionally, i.e. to the exclusion of those persons who profess strong religious beliefs but who are not members of some certain recognized denominational church."

Again on page 6:

". . .Religious exemption from the vaccination requirements provided for in Mississippi Code annotated Section 41-23-37 should not be based upon membership in some certain church. Such requirement of membership allows the exemption to operate unconstitutionally."

Again on page 1 of the Rebuttal Brief is the following statement:

"Appellants maintain the statute is unconstitutional in that it requires membership in a church as the measurement for whether one qualifies for a religious exemption from the statute."

As authority for the proposition the statute was unconstitutional, Petitioners cited two cases: Maier v Besser, 341

N.Y.S.(2d) 411 (1972), and Kolbeck v Kramer, 202 A.2d 889 (N.J. 1964).

The Appellee School District distinguished the cited cases from Petitioners' case, in that the Plaintiffs in both Kolbeck and Maier belonged to no formal religious denomination, whereas in the instant case the Petitioner Brown belonged to the Church of Christ. The Respondents argued that Petitioners' case was analagous to In Re: Elwell (N.Y. 1967) 284 N.Y.S.2d 924, and McCartney v Austin, (N.Y. 1968) 293 N.Y.2d 188. Both these cases held valid an almost identically worded statute as the Mississippi Statute. Elwell involved a Methodist chiropractor who argued it was against his conviction for his children to be vaccinated. In McCartney Roman Catholics argued for admission of their son, after refusing to have him vaccinated against polio.

Respondents also cited Itz v Penick (Texas 1973) 493 S.W.2d 506, in which the

denomination was not stated, but the Plaintiff testified he had strong religious convictions against vaccinations, and immunization conflicted with the denomination of which he or his children was an adherent or member. The Texas Court held the statute constitutional.

The Mississippi Supreme Court declared the entire religious exemption unconstitutional. Brown, et al. v Stone, et al. (Miss. 1979) 378 So(2d) 218.

The Mississippi Supreme Court's decision had three salutary effects:

(1) Other states may do as they please, but insofar as the school children of Mississippi are concerned, the Legislature of this state cannot enact a law which permits parents or guardians to refuse to have a child immunized on some claimed religious belief of their own, whether practiced by some organized denomination to which they belong as a part of its religious tenets, or by them individually.

(2) The discrimination in the statute about which Petitioner complained was totally removed.

(3) The statute now passes Constitutional muster.

PETITIONER HAS NO STANDING AND THE ISSUE IS MOOT

If the Mississippi Legislature had first passed a law requiring children to be immunized, and had given no religious exemption, Petitioners concede it would be a constitutional exercise of legislative power. The Mississippi Supreme Court has now re-written this statute to read in such a manner. Petitioner Brown can claim no discrimination against him or his child.

Petitioner Brown has never been harmed by the Respondent Houston Municipal Separate School District because his child was ineligible to attend the Houston Municipal Separate School District aside from his refusal to have the child vaccinated, and he

has long since removed his residence to another county in this state where his child attends school. We do not know whether the child has been immunized at this date or not.

This was a lawsuit between Brown and the Trustees and Superintendent of the Houston Municipal Separate School District. If the United States Supreme Court held the child need not be immunized, it would be of no benefit unless Brown established residence within the Houston Municipal Separate School District to satisfy other state requirements for admission of children to particular public schools.

Of the three questions counsel allege are presented for review, numbers 2 and 3 are clearly not before the Court, because these questions were not addressed by the Mississippi Supreme Court.

As to the first question, whether the statutory religious exemption to the mandatory vaccination of school children is

unconstitutional under the equal protection clause of the Fourteenth Amendment, Respondents respectfully submit:

1. The issue is moot. Sears, Roebuck v Carpet Layers, 397 U.S. 655, 25 L. Ed. 2d 637, 90 S. Ct. 1299; FeFunis v Odegaard, 1974, 416 U. S. 312, 40 L. Ed. 2d 164, 94 S. Ct. 1704.

2. Petitioner Brown has no standing. Flast v Cohen, 1968, 392 U.S. 83, 99, 20 L. Ed. 2d 947, 961, 88 S. Ct. 1942. ". . .when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable." And, in this case 378 So 2d 218, page 222, the Mississippi Supreme Court, in quoting from Prince v Commonwealth of Massachusetts, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438:

"The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. . .Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."

CONCLUSION

In conclusion, Respondents have not deprived Chad Allan Brown of a single day's attendance in the public schools of Mississippi.

Does a single parent have standing to assert a constitutional right to action, or as in this case inaction, which not only endangers the lives of countless others, but of his own child as well? It must be remembered that even though every other person with whom the non-vaccinated child came in contact were vaccinated, vaccinations are not perfect, they do not always afford immunization. A non-vaccinated child, whether afflicted with the

disease, or a silent carrier of such disease, would still endanger the lives of those in whom the vaccinations, for some reason or another, were ineffective.

> "There is no war between the Constitution and common sense." Mapp v Ohio (1961) 367 U.S. 643, 657, 6 L. Ed. 2d 1081, 1091, 81 S. Ct. 1684.

Respectfully submitted,

ARMIS E. HAWKINS,
P. O. Box 266,
Houston, Mississippi 38851,
Attorney for Respondents.

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 79-1574

CHARLES H. BROWN and CHAD ALLAN BROWN,
Petitioners

v.

JOE A. STONE, et al., Respondents

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of July, 1980, three copies of the Response to Petition for Writ of Certiorari were mailed, postage prepaid, to Harry N. Rayburn, Jr., Attorney at Law, P. O. Box 22684, Jackson, Mississippi 39205, Counsel for the Petitioners. I further certify that all parties required to be served have been served.

ARMIS E. HAWKINS,
P. O. Box 266,
Houston, Mississippi 38851,
Attorney for Respondents

APPENDIX

TO

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

AFFIDAVIT OF JOHN C. WILLIAMS, JR.

THE STATE OF MISSISSIPPI)

COUNTY OF MADISON- - - -)

Personally appeared before me the undersigned authority in and for the said County and State, within my jurisdiction, the within-named John C. Williams, Jr., who being by me first duly sworn, upon his oath states the following, to-wit:

1. That he is the duly elected, constituted and acting County Superintendent of Education of Madison County, Mississippi, and as such public official is the custodian of all records pertaining to the children attending school within the Madison County School District. That the Ridgeland Elementary School is located in, and is a part of the Madison County School District.

2. That the records of the Madison County School District, and the Ridgeland Elementary School, show that Chad Allan Brown, the son of Charles H. Brown, was enrolled as a student in the second grade on August 24, 1979, and that he has satisfactorily completed his second year of school in the 1979-80 school year, and has been promoted to the Third Grade of the Ridgeland Elementary School. That he is now enrolled as a student for the

APPENDIX "2"

3. That the records further show that application was made for transfer of this student to the Ridgeland Elementary School in Madison County, Mississippi, at the conclusion of his attendance at the Woodland Attendance Center in May, 1979. Thereupon, the Woodland Attendance Center sent by mail the relevant school records of this child to the Ridgeland Elementary School, Post Office Box 236, Ridgeland, Mississippi 39157.

Doyle M. McQuary

DOYLE M. McQUARY

Sworn to, acknowledged and subscribed before me, on this the 6th day of June, A. D. 1980.

MY COMMISSION EXPIRES:

SYLVIA L. MARTIN
NOTARY PUBLIC
MY COMMISSION EXPIRES SEPT. 23, 1983

Sylvia L. Martin

NOTARY PUBLIC

AFFIDAVIT OF DOYLE M. McQUARY

THE STATE OF MISSISSIPPI)

COUNTY OF CHICKASAW- - -)

Personally appeared before me the undersigned authority in and for the said County and State, within my jurisdiction, the within-named Doyle M. McQuary, who being by me first duly sworn, upon his oath states the following, to-wit:

1. That he is the duly elected, constituted and acting County Superintendent of Education of Chickasaw County, Mississippi, and has held this office for a number of years. That as such public official, he is the official custodian of all records pertaining to children attending school within the Chickasaw County School District. That the Woodland Attendance Center is one of the public schools located within the Chickasaw County School District.

2. That the records of the Chickasaw County School District, and the Woodland Attendance Center show that Chad Allan Brown, the son of Charles H. Brown, was enrolled as a first year student in the Woodland Attendance Center for the school year 1978-79, this child beginning the attendance of school at said Attendance Center on October 20, 1978, and ending May 16, 1979.

APPENDIX "1"

school year 1980-81, and in the absence of his transferring to another school district, will be a student at the Ridgeland Elementary School.

JOHN C. WILLIAMS, JR.

Sworn to, acknowledged and subscribed before me, on this the 24th day of June, A. D. 1980.

MY COMMISSION EXPIRES:

My Commission Expires July 27, 1982

NOTARY PUBLIC